

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Norfolk Division**

**ANTON NELSON JOSHUA,
(No. 1747915),**

Petitioner,

v.

CIVIL ACTION NO. 2:22cv439

**HAROLD W. CLARKE, Director,
Department of Corrections,**

Respondent.

FINAL ORDER

This matter was initiated by petition for a writ of habeas corpus under 28 U.S.C. § 2254. Petitioner challenges his 2018 state convictions in the Virginia Beach Circuit Court for attempted robbery, use of a firearm in commission of a felony, conspiracy and aggravated malicious wounding. As a result of the convictions, petitioner was sentenced to serve a total of 29 years in prison.

The petition was referred to a United States Magistrate Judge for a report and recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and (C) and Local Civil Rule 72 of the Rules of the United States District Court for the Eastern District of Virginia. The Magistrate Judge's Report and Recommendation filed June 27, 2023, recommends dismissal of the petition with prejudice. (ECF No. 14). The Report and Recommendation advised the parties of their right to object and the time limit for doing so. On July 13, 2023, the court received petitioner's Objections to the Magistrate Judge's Report and Recommendation (ECF No. 15). The Government did not respond to

petitioner's Objections and the time for doing so has now expired.

The court, having reviewed the record and examined the objections filed by the petitioner to the Magistrate Judge's Report and having made *de novo* findings with respect to the portions objected to, does hereby adopt and approve the findings and recommendations set forth in the Report of the United States Magistrate Judge filed June 27, 2023, and it is, therefore, **ORDERED** that Respondent's Motion to Dismiss (ECF No. 8) is **GRANTED**, Joshua's petition is **DENIED** and **DISMISSED** with prejudice, and judgment shall be entered in favor of the Respondent.

Finding that the basis for dismissal of Petitioner's § 2254 petition is not debatable, and alternatively finding that Petitioner has not made a "substantial showing of the denial of a constitutional right," a certificate of appealability is **DENIED**. 28 U.S.C. § 2253(c); *see* Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a); *Miller-El v. Cockrell*, 537 U.S. 322, 335–38 (2003); *Slack v. McDaniel*, 529 U.S. 473, 483–85 (2000).

Petitioner is **ADVISED** that because a certificate of appealability is denied by this Court, he may seek a certificate from the United States Court of Appeals for the Fourth Circuit. Fed. Rule App. Proc. 22(b); Rules Gov. § 2254 Cases in U.S. Dist. Cts. 11(a). **If Petitioner intends to seek a certificate of appealability from the Fourth Circuit, he must do so within thirty (30) days from the date of this Order. Petitioner may seek such a certificate by filing a written notice of appeal with the Clerk of the United States District Court, United States Courthouse, 600 Granby Street, Norfolk, Virginia 23510.**

The Clerk is directed to mail a copy of this Final Order to Petitioner and provide

an electronic copy of the Final Order to counsel of record for Respondent.

Norfolk, Virginia
August 3, 2023

/s/
ARENDA L. WRIGHT ALLEN,
UNITED STATES DISTRICT JUDGE